

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3643 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMLABEN W/O DHANSUKH LAVGHAN VASAVA

Versus

DISTRICT MAGISTRATE

Appearance:

MR SATISH R PATEL for Petitioner

MR KC SHAH, A.G.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner Kamlaben wife of Dhansukh Lavghan Vasava, has brought under challenge the detention order passed against her on 21st March 1996 under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the petitioner has been carrying on anti-social activities of storing and dealing in liquor and also creating an atmosphere of fear through her associates. It is unfortunate that as many as 23 Prohibition offences have been registered against her in Bharuch "B" Division City Police Station. They are listed below :

1. III 2/95 Under Sections 66(B), 65(E) of the Prohibition Act. 3 litres of liquor amounting to Rs.60/-. The matter is pending in the Court. Released on Bail of Rs.500/- by the Police Station Officer;
2. III 45/95 - do - (5 ltrs. of liquor amounting to Rs.100/-)
3. III 98/95 - do - (4 ltrs. of liquor amounting to Rs.80/-)
4. III 99/95 - do - (28 ltrs. of liquor amounting to Rs.560/-);
5. III134/95 - do - (7 ltrs. of liquor amounting to Rs.140/-);
6. III176/95 - do - (4.5 ltrs. of liquor amounting to Rs.90/-);
7. III226/95 - do - (3 litres of liquor amounting to Rs.60/-);
8. III274/95 - do - (12 litres of liquor amounting to Rs.240/-);
9. III282/95 - do - (2.5 litres of liquor amounting to Rs.50/-);
10. III305/95 - do - (4 litres of liquor amounting to Rs.80/-);
11. III344/95 - do - (9 litres of liquor)
12. III349/95 - do - (28 litres of liquor)
13. III397/95 - do - (8 litres of liquor)
14. III456/95 - do - (40 litres of liquor amounting to

Rs.800/-)

15.III493/95 - do - (4 litres of liquor amounting to Rs.80/-)

16.III506/95 - do - (6 litres of liquor amounting to Rs.120/-);

17.III536/95 - do - (6 litres of liquor amounting to Rs.120/-);

18.III538/95 - do - (3 litres of liquor amounting to Rs.60/-);

19.III 1/96 - do - (8 litres of liquor amounting to Rs.160/-);

20.III 34/96 - do - (12 litres of liquor amounting to Rs.240/-);

21.III 37/96 - do - (12 litres of liquor amounting to Rs.240/-);

22.III 80/96 - do - (18 litres of liquor amounting to Rs.360/-);

23.Chapter Under Section 93 of the Prohibition Act.
Case No.6/96 The matter is pending in the Court.

3. The facts with regard to all the aforesaid complaints have been noted in the grounds of detention and they indicate that the petitioner has been habitually carrying on the activities of dealing in liquor. Over and above the aforesaid cases the statements of four witnesses have been recorded to show how the petitioner has been causing atmosphere of fear to arise with the aid of her associates. Reference has also been made to Chapter Case No.6/96 dated 20th February 1996 under Section 93 of the Bombay Prohibition Act, which case has been shown to be pending in the court and the papers with regard to such case have been shown to have been annexed at Page : 177 to 178. However, it would be interesting to note that reference has been made to Chapter Case No.4/95 dated 12.1.1995 by stating that such a case was filed against the petitioner in the Court of Divisional Magistrate at Bharuch and that upon pleading guilty in that case the petitioner was required to give surety of Rs.1000/- for one year. It is recited on the internal page No.16 and at Page : 30 of the compilation that papers with regard to this case are annexed with the

grounds. However, there are blanks near the words indicating page Number. It has, therefore, been straneously argued that there is non-application of mind on the part of the detaining authority with regard to the facts concerning Chapter Case No.4 of 1995, the facts with regard to the petitioner having pleaded guilty in the chapter case and the facts with regard to the order of surety in the sum of Rs.1000/- for one year having been passed by the Divisional Magistrate, Bharuch. It is submitted that the petitioner has also not been supplied with any of the papers concerning the said Chapter Case No.4 of 1995. Thus, both, on the ground that there is non-application of mind on the part of the detaining authority as also on the ground that there is violation of Article 22(5) of the Constitution of India the impugned order of detention has been challenged. In reply to the arguments it has been submitted by Mr.K.C.Shah, learned A.G.P. that here is a case of lady indulging in a systematic activity of bootlegging which is not only adversely affecting the public order, but which is injurious to the public health also. It is unfortunate that a lady has been facing as many as 23 cases under the various provisions of the Bombay Prohibition Act and that she is alleged to have faced two chapter cases within the span of a year or two. However, even then she would be entitled to the benefit of Article 22(5) of the Constitution of India. It is the settled position of law that before passing an order of detention under the PASA Act the detaining authority has to have subjective satisfaction upon application of his mind to the facts and material placed before him. In the instant case admittedly the facts with regard to Chapter Case No.4/95 as stated above have been relied upon in the absence of relevant papers, with the result that even the copy of such papers are not made available and could not be made available to the petitioner so as to enable her to make effective representation.

4. It is in this respect that Mr.S.R.Patel, learned Advocate for the petitioner has placed reliance upon an unreported decision of this Court in Dolatsingh Himatsingh Parmar V/s. The Commissioner of Police, Vadodara and others, in Special Criminal Application No.1863 of 1990 (Coram : B.S.Kapadia,J., as His Lordship then was, and Y.B.Bhatt, J.) rendered on 2.1.1991 (per Kapadia,J.). Following observations may be reproduced from the said decision :

"In this case no affidavit-in-reply is filed on behalf of the respondents. Mr.S.T.Mehta, learned Addl. P.P. appearing for the respondents has

perused the original file of the detaining authority, but he could not find any papers with regard to the proceedings under Section 151 and 107 of the Cr.P.C. When such papers or copies thereof are not placed before the detaining authority the detaining authority cannot satisfy on the point of necessity of detaining a person and/or dispensing with the less drastic remedy available under the ordinary law. The detaining authority should have some material before him to know as to on what date the person concerned was arrested under Section 151 of Cr.P.C. He also should have some material before him to satisfy himself on the point as to when such proceedings under Sec.107 of Cr.P.C. were initiated and since when they were pending. In absence of any such material placed before the detaining authority, he could not have subjectively satisfied himself on the point of necessity to detain the petitioner. Thus, in absence of such material though it is mentioned in the grounds of detention that he was satisfied with regard to less drastic remedy like initiation of proceedings or pending proceedings under Section 107 of the Cr.P.C., it vitiates the subjective satisfaction arrived at by the detaining authority. When that is so, main ingredient with regard to satisfaction about necessity of passing the order of detention as required u/s.3(i) is not complied with in the present case. Therefore, the whole order based on implied subjective satisfaction is vitiated. So, the order of detention passed against the petitioner cannot be sustained and the order of detention deserves to be quashed and set aside."

5. In my opinion the above Bench decision and the ratio therein would squarely apply to the facts of the present case as noted with regard to the similar grounds taken by the petitioner herein.

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the aforesaid ground, no other ground has been pressed into service so as to challenge the impugned order of detention.

7. In view of what is stated above, following order is required to be passed :

The impugned order of detention is hereby quashed

and set aside. The petitioner - detenu Kamlaben w/o
Dhansukh Lavghan Vasava shall be forthwith set at liberty
if she is not required to be detained in any other case.
Rule made absolute accordingly.

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